HON. MR. MILLS' SPEECH

ON THE

BOUNDARIES OF ONTARIO.

HOUSE OF COMMONS,

FRIDAY, 31st March, 1882.

Mr. MILLS. It is not my intention to undertake to combat the observations made by the hon. member for Niagara in relation to myself. I do not think it is necessary to enter into any defence of my conduct in becoming a Minister of the Crown after having been an agent of the Government of Ontario, in preparing a case in their behalf. I think I need not before this House enter into any discussion of that subject, especially when we have one so important as that submitted in this particular resolution. The subject is one of very great interest to the people of Ontario, not only those opposed to the present Government, but to people of every shade of political opinion throughout the Province of Ontario. When the Prime Minister announced, in 1872, that the boundary of Ontario on the west was to be determined by a line drawn due north from the junction of the Ohio and the Mississippi Rivers, and on the north by the watershed which separates the lakes from Hudson's Bay, the country was taken by surprise. The contention was wholly at variance with that put forward by the right hon. gentleman and his colleagues not long before. If the line taken was not the subject of a great deal of controversy, it was because the people of Canada had, from the beginning, been led by merchants, by traders, by newspapers, and by public men of every shade of political opinion to believe that the Hudson's Bay Company were trespassers in the North-West, and in the whole interior country, and were at best possessed of but a doubtful title in the vicinity of Hudson's Bay. And the public of Ontario had no doubt, and could have none, as to the conclusions which must ultimately be reached. It is true that the highest court of Quebec had, at one time, decided that the boundary of

Ontario upon the west, was a meridional line drawn due north from the junction of the Ohio with the Mississippi; but it did so with a view of upholding its jurisdiction in a case which was before it. The purpose of the Act was wholly lost sight of. The true grammatical construction of the section of the Act under consideration, was wholly overlooked, both by counsel and by the court. It can be conclusively established, by surrounding circumstances, as well as by a careful examination of the Act itself, that, if that Act is still to be regarded as marking the limits of Ontario, it extends the boundaries westward, at least as far as the meridian of Lake Itasca, the source of the Mississippi, that if the word "northward," as used in the first section of the Act, applies to the direction of the countries, territories and islands from the boundary on the south, then the territories of the Hudson's Bay Company, make the northern boundary. But if it applies to the northern deflection of the southern boundary as a limitary line on the west, then there is no boundary given to Ontario on the north, and we are left to seek for a northern boundary from some other sources, and the present Province of Quebec would still retain as its northern boundary the line drawn by the proclamation of October, 1763. It is well known to every one who has studied the history of the fur trade, that the whole country from Lake Superior to the Rocky Mountains, as far north as Lake Athabaska, and eastward in close proximity to Hudson's Bay, was occupied and held by France from the time that she first took possession, down to the surrender of Canada by the Treaty of Paris; that after the cession of Canada to Great Britain the country was, for several years, occupied by numerous fur traders, from Montreal, from Albany, and from Illinois; that after the United States had acquired their independence, this trade was carried on by merchants of London and of Montreal. That they ultimately formed themselves into a single company; that they had in their employment about two thousand voyageurs and traders, who were scattered over this immense region; that it was not until the beginning of this century that the Hudson's Bay Company ventured away from the shores of the Bay, and began to set up a claim to the whole basin of Hudson's Bay. I shall undertake to show you that the Government of Canada, having cognizance of these facts, disputed the pretensions of the Hudson's Bay Company, not only to a large section of country north of the watershed, but to the whole North-West Territories. I shall endeavor to make it clear that the Crown did not possess the territories professedly granted to the Hudson's Bay Company, at the time the charter was given; that it was by the due dili-

gence of the Company that the Crown expected to acquire the sovereignty of the country; and that the sovereignty of the Crown and the property of the Company depended entirely upon the activity and enterprise of the Company in exercising authority and dominion over the territories formally granted. I will undertake to show you that not only was there no conveyance of the country which was in the possession of any other Christian Prince at the time the charter was given, but there could be no valid exclusion of France, or of any other country, from the unoccupied territories of North America by this grant. I shall endeavor to show you that by the charter the Crown professed to grant a title in fee simple to one portion of the country in the vicinity of the Bay. That it professed to grant an exclusive right of trade over another portion of the country of which no title to the soil was given. I shall undertake to show you, that the claim to the whole basin of Hudson's Bay, is a modern claim; and that before the Treaty of Utrecht, the treaty upon which the rights of the Hudson's Bay Company are wholly dependent, they made no claim to any territory south of the fifty-first parallel. I will undertake to show that in appointing arbitrators to ascertain and determine the boundaries of Ontario, when those boundaries were contested by the Government of Canada, the Crown acted within its authority; that it was properly advised; that an award was properly made; that Ontario did not receive by that award a larger extent of territory than she was entitled to; and that that award ought to be affirmed and acted upon as setting forth the true limits of the Province of Ontario. The Government have said, in a recent communication to the Government of Ontario, that the territory has been acquired on behalf of Canada from the Hudson's Bay Company. That is a misstatement of the case. Canada has always disputed the claims of the Hudson's Bay Company, not only to the lands now in question, but to the whole North-West country. When the North-West Company amalgamated with the Hudson's Bay, the disputed territories lying far beyond the bounds of settlement, ceased for a time to be the subject of controversy, but it was not because the pretentions of the Hudson's Bay Company were admitted to be well founded, but only because the Province had no present interest in actively enforcing its claim against the Company. As early as 1857, an elaborate report was made by an hon. member of the Government, of which the present hon. Prime Minister was the Premier, in which the right of the Hudson's Bay Company to the territories in question was disputed, and the claims of Canada, on behalf of the present Province of Ontario, was

asserted over the whole country to the Pacific Ocean. The Colonial Secretary informed the Government of Canada that an enquiry was to be made by a Committee of the House of Commons into the affairs of the Company, and into their claims to the North-West, and that Canada might desire to be represented before that Committee. The Colonial Secretary would not have given such an invitation had he not known that the people of Canada had long before disputed the claims of the Hudson's Bay Company to the country. The Government acted upon this invitation, and Chief Justice Draper was sent to represent Canada before a Committee of the House of Commons. He informed the right hon. gentleman and his colleagues that it was desirable to have a decision of the Judicial Committee of the Privy Council as to the western limit of the Province of Canada, as well as of the northern boundary; and that he confidently hoped a decision would give to Canada a clear right west to the line of the Mississippi, and a considerable distance north of the watershed. In fact, Chief Justice Draper, who was a most able judge—and competent to form a correct conclusion—after a very careful consideration of the subject, intimated as his view, that the boundaries of Ontario were those which the arbitrators subsequently declared them to be by their award. In 1865, a member of the Government, of which the right hon. gentleman was the leader in the Legislative Assembly, still claimed the country as a part of Upper Canada, and only agreed to compensation to avoid the mischiefs of delay consequent upon a protracted suit before the Judicial Committee of the Privy Council. When the Federal Union of the four Provinces was consummated, the Government of the right hon. gentleman declared their determination to acquire not only the territories hitherto claimed as a part of Upper Canada, but those formally granted to the Hudson's Bay Company in the vicinity of the Bay; and so little value did he place upon the title of the Company that he invited the Government of the United Kingdom to transfer the whole country to Canada, leaving the Hudson's Bay Company the privilege of upholding their rights, if they had any, not before the Judicial Committee but in the Canadian courts of law. The right hon. gentleman knew that the Company were a proprietary Government; that by their charter they had professedly conferred upon them the power to govern the country; and that the Crown had not the power to do what he wanted to have done, in the manner he proposed. The right hon. gentleman said, in defence of his policy:

"That we wished to take possession of this territory, and would undertake to legislate for it and to govern it, leaving the Hudson's Bay Company no right, except the right of asserting their title in the best

way they could in courts of competent jurisdiction. And what would their title be worth the moment it was known that the country belonged to Canada, and that the Canadian Government and Canadian courts had jurisdiction there, and that the chief protection of the Hudson Bay Company, and the value of their property, namely, their exclusive right of trading in those regions, was gone forever? The Company would only be too glad that the country should be handed over to Canada, and would be ready to enter into any reasonable arrangement. The value of the Company's interest would be determined by the value of their stock; and what would that be worth when the whole country belonged to Canada?"

The right hon. gentleman proposed to deal with the rights of the Hudson's Bay Company, whatever they were, as he now undertakes to deal with the rights of Ontario. I do not know whether the right hon. gentleman expected to succeed in the course he had marked out for his Government. He was informed that the Crown had not the power to do what he proposed, but he certainly did succeed in incurring the ill-will of the Company's agents, as well as of the settlers, in the North-West. He succeeded in stirring up a rebellion, which cost the country more than a million of dollars, and which has impeded the progress of the country ever since. The right of the Hudson's Bay Company, to the whole country, was energetically denied by his colleagues; and if compensation was granted to the Company it was in order to avoid protracted litigation, and not because it was supposed they had any claim beyond their property in their farms and posts which could be successfully upheld in a court of law. So far was the right hon. gentleman from recognizing any title in the Hudson's Bay Company, that, in January, 1869, two of his colleagues who had gone to England for the purpose of securing a transfer of Rupert's Land and the Indian Territories to Canada, informed Earl Granville that:

"The boundaries of Upper Canada on the north and west were declared, under the Constitutional Act of 1791, to include all the territory to the westward and southward of the boundary line of Hudson's Bay to the utmost extent of the country, commonly called or known by the name of Canada. Whatever doubt may exist as to the utmost extent of Old or French Canada, no impartial investigator of the evidence, in the case, can doubt that it extended to and included the country between Lake of the Woods and Red River. The Government of Canada, therefore, does not admit, but, on the contrary, denies, and has always denied the pretentions of the Hudson's Bay Company to any right of soil beyond that of squatters in the territory through which the road complained of is being constructed."

This shows very clearly that the right hon. gentleman and his colleagues, down to the time the country was surrendered to Canada, claimed it as a part of the Province of Ontario; and that when compensation was granted to the Hudson's Bay Company, it was not granted to them because they had any proprietary rights in the disputed territories, but in order to get immediate possession of the country. But

what I have said does not apply to the territory south of the watershed and west of Prince Arthur's Landing. The Hudson's Bay Company never made any claim to that country, and it has been uniformly dealt with as a part of the Province of Ontario. As early as 1856 the Government negotiated with the Indians for the surrender of the country westward of Thunder Bay, as far as the source of the Pigeon River; and before the Federal union of the Provinces no fewer than 35,000 acres of the territories so surrendered had been patented to private parties. When representation was given to the Algoma District it was included in that district, and the hon. member for Algoma claims to represent those people. They are electors within his district, although, if I understand his present views upon the question, he has no business here as a representative from Ontario. As late as April, 1872, I find the hon. First Minister sending accounts to the Government of Ontario for cash advances made for the erection of court-houses, and for the maintenance of a police force beyond what, he says, are the limits of the Province. He has also presented accounts for the amount due the Indians under the Robinson Treaty, although he holds that the territory does not belong to Ontario, for which he is demanding from it the amount promised the Indians for its surrender. In the ninth and tenth paragraphs of the despatch sent to the Lieutenant-Governor of Ontario, on the 27th of January last, the Secretary of State says:

"His Excellency's advisers are of opinion that, in advance of Parliamentary sanction, it was not only highly inexpedient, but transcended the power of the Government of the day, to refer to arbitration the question of the extent of the North-West Territories acquired by the Dominion by purchase from the Hudson's Bay Company. That territory had been acquired on behalf of, and was, in fact, held for all the Provinces comprised in the Dominion, and the extent of it was a question in regard to which, if a dispute arose, only Parliament could have absolved the Government of the day from the duty of seeking an authoritative determination by the legal tribunals of the country."

I deny the doctrine laid down in both these propositions. I will allude to the second proposition first, and I will say that, as to the question of the extent of the North-West Territories, and the fact that they are the common property of the Dominion does not limit the authority of the Crown with regard to their boundaries any more than it is limited in dealing with the Provinces—if there is a difference it is in favor of a Province—and the right hon. gentleman as First Minister did not fail to deal absolutely and finally with the disputed boundary of a Province, without the prior sanction or subsequent ratification of Parliament. The hon. gentleman knows that, in referring a boundary question to the Judicial Committee, he is asking for a decision not from a Court but from a Council of State.

Sir JOHN A. MACDONALD. Is it not a Court of Appeal?

Mr. MILLS. It is governed by legal principles, but it is a Council of State and not a Court of Appeal. If the hon. gentleman will look at Mr. Finlayson's book on this subject, he will find that very fully discussed, but whether it is so or not, it proceeds, on all questions of disputed boundaries, as a Council of State, and the hon. gentleman will find, in the cases of the disputed boundaries of New Hampshire, Rhode Island, Massachusetts, and the Plymouth Colony, that these questions were considered, not by any Court, but by the King in Council.

Sir JOHN A. MACDONALD. At that time there was no such thing as a Judicial Committee of the Privy Council.

Mr. MILLS. Exactly so. But the function of the King, in this particular, has never been changed. I remember very well the one case that I mentioned, the New Hampshire case, the claim of Captain Mason. The Chief Justice of the Common Pleas and the Chief Justice of the Queen's Bench, as members of the Council, gave advice precisely as the Judicial Committee of the Privy Council do now. They entered into an elaborate discussion and proceeded upon judicial principles, but still they sat as a Council of State and concluded by advice and not by a judgment. Will the hon. gentleman mention any case in which the Judicial Committee of the Privy Council proceeded otherwise than by advice.

Sir JOHN A. MACDONALD. The Committee of the Privy Council is expressly declared to be a Court of Appeal for all ecclesiastical and all colonial questions. If the Queen passes an Order in Council which is a mere form, the hon. gentleman says it is but a matter of advice. It is by way of a solemn decision of a High Court of Appeal, and is unanimous, as decisions in appeal should be; there ought to be no dissenting voice.

Mr. MILLS. I am not going to discuss the question as to what ought or ought not to be the custom of Courts of Appeal. I am dealing with facts as they are. I stated that the Judicial Committee of the Privy Council cannot do more than advise the Queen. They may possess some of the powers of a court, but they are still as they were from the beginning, a Council of State. The Judicial Committee does not render judgments; it gives advice. You do not know what the views of the individual members of that body are. They hear arguments, they deliberate in secret. But because its members constitute a Council, and not a court, there are no dissentient

opinions permitted. The conclusion come to is the advice of the whole Council. And, were it necessary, it could be shown that the settlement of political boundaries have always been regarded as acts of State belonging to the political Department of Government, and not as judgments falling within the cognizance of the Courts. The first part of this paragraph is equally untenable, and it is all the more remarkable, coming from a First Minister, who has made it a point, all his public life, to act upon a wholly different rule. The hon. gentleman was a party to a treaty which ceded to the United States a right to navigate the St. Lawrence River, and who abandoned the right to navigate some of the rivers upon the north-west coast, and consented to the restriction of our rights in the navigation of others, without the prior sanction, or the subsequent confirmation of either the Parliament of this country or the Parliament of the United Kingdom. It is well known to the House that the boundaries between British Columbia and Washington Territory, as laid down by the Washington Treaty of 1846, were in dispute. The First Minister was a party to referring the question, not to eminent jurists, but to a powerful potentate, who was authorized to give an absolute decision by which this country was bound. He did not then seek Parliamentary authority or Parliamentary absolution for himself or his government. So far was he from referring the article in the Treaty of Oregon to the Emperor of Germany for judicial construction, that he was a party to an agreement which prevented the question coming before the Emperor on its merits. He was never asked where the provisions of that treaty required the boundary line to be drawn. Whether it was because the Emperor was not a jurist, and was not considered competent to construe the treaty, I cannot say, but I can say, he was not permitted to do so. He was told that the English contended that the boundary between Vancouver Island and the Mainland should be drawn through one channel, and the United States held that it should be drawn through another. He was asked to decide which of these two best comports with the provisions of the treaty. The Emperor decided in favor of the American view, but we know that, had he been free to have laid down the boundary under the treaty, he would have followed neither of those channels; he would have taken a line between them, which would have left the disputed island a Canadian possession. The right hon. gentleman, by his statesmanship, made San Juan a possession of the United States. In fact, the Island of San Juan, which, in the opinion of the German Emperor, was a part of British Columbia, by the Treaty of 1846, was made a part of the

United States, by the Treaty of 1871. We know that in everything which specially concerned Canada, the other British Commissioners deferred to the wishes—they followed the lead of the right hon. gentleman. Will the First Minister contend, that the Crown may enter into arrangements and compacts by which a British possession may be lost—by which it may be transferred to a foreign State by which it may be dismembered, without the permission of Parliament, but that it would be unconstitutional, that it would be beyoud the power of the Crown to ascertain and determine the boundary between two Provinces of Her Majesty's dominions, without first having obtained the approval of Parliament to such a line of executive action? I will undertake to show that the late Government did not transcend its authority when it referred the question of the disputed boundaries to arbitration. The Secretary of State suggests, in his despatch to the Lieutenant-Governor of Ontario, that there was a conventional boundary formed by the arbitrators. Now, there is not a shadow of authority for such a suggestion; neither in the Orders in Council nor in the correspondence between the two Governments, nor in the case stated by each, nor in the arguments by counsel, nor in the award of the arbitrators, is there any other boundaries sought for or spoken of than the legal limitary lines which separate upon the north and on the west the outlying territories of Canada from the Province of Ontario. The question put in issue by the case of each party, the question argued by the counsel, the question upon which the arbitrators gave a decision, was this one,—where are the legal boundaries of the Province of Ontario upon the north and on the west? They said that the boundary line of Hudson's Bay mentioned in the proclamation of 1791 meant the shore of Hudson's Bay, and the law officers of the Crown of England had before said the same thing. They were of opinion that the Act of 1774 made the Mississippi the boundary of the Province of Quebec in the west as far as the Mississippi River extended, and Lord Camden, Lord Thurlow, Lord Loughborough, in England, and Chief Justice Draper, here, had also held the same view. In starting from the North-west Angle to draw the western boundary, they started from a point to which the International boundary of Upper Canada had before been set out in the Governor's Commission. Had the source of the Mississippi been further west the boundary would have been, no doubt, carried further westward; but the source of the Mississippi and the North-west Angle are so nearly upon the same meridian, that they may be taken as identical, according to the legal maxim, that "the law does not take notice of trifles." I shall in this connection refer

to two classes of cases which involve the same principle as the action which the Government here contest. The first of these classes may be held to assert with much greater emphasis, than the action of the late Government in this case, the right of the Executive to deal with all such questions, limited only by the responsibility of Ministers to Parliament. Blackstone lays down the proposition that the Sovereign alone deals with other powers and that there can be no doubt, that at the conclusion of a war, the consent of Parliament is not necessary to enable the Crown to alienate British territory to a foreign State. Whether it has power to alienate territory in time of peace, has been a debated question, but it is, I think, now generally conceded that where the full dominion is in the Crown, where the territory has been acquired by conquest or by cession, the Crown has power to cede without either the permission or sanction of Parliament. It has been argued by Mr. Forsyth and others, that where the Parliament has extended its authority over the dominions of the Crown, and also where Provincial Legislatures have been created, that the Crown, no longer having full dominion, has not the power of cession. This I will show you is not in accordance with usage; and it will be difficult, on any constitutional theory, to maintain that the Crown possessed, for the purpose of negotiating peace, powers, which, at any other time, would be held to be an encroachment upon the authority of Parliament. The Judicial Committee seemed to favor the views of those who contended that the power of the Crown in this particular was unlimited except perhaps with regard to those districts or colonies in which representative Government was established.

Sir JOHN A. MACDONALD. The power of the Crown is paramount.

Mr. MILLS. I do not know that the powers of the Crown paramount are at all different so far as this question is concerned from the powers of the Crown in other respects. Where the Crown has full dominion, as it is called, there can be no question as to its right to cede a territory. There are numerous instances of the exercise of this power. But even where the power of the Crown is limited by the intervention of the Imperial Parliament, or the creation of a Local Legislature, there are many instances where the Crown has undertaken to deal with a territory, and where it has ceded it and altered boundaries without the prior sanction or subsequent ratification of Parliament.

Sir JOHN A. MACDONALD Does the hon. gentleman mean to say that the Crown, on the advice of the Canadian Ministry, could give the Manitoulin Islands to the United States?

Mr. MILLS. I am not arguing that question; but I shall answer the right honorable gentleman by-and-bye.

Sir JOHN A. MACDONALD. The Crown paramount could do it, but the Canadian Crown could not do it.

Mr. MILLS. I am not now discussing what ought to be, but what is the prerogative of the Crown in this particular. There is no doubt a strong tendency in our own day to restrain the prerogatives of the Crown by holding Ministers more strictly responsible for their exercise. Parliament is more active and more interested in the work of Administration than formerly. Behind it and outside of it there is the great power of public opinion which will not permit it to remain an indifferent spectator of Administrative Acts in which the public are deeply interested. Parliament may insist upon being consulted with regard to any negotiations with a foreign State. It may insist upon controlling all negotiations. It may insist upon all matters being submitted to it before they are finally ratified. It may do this because it is the supreme authority in the State; and if it did so no Ministry would be likely to disregard its mandates. But it has not hitherto in such matters asserted its supreme authority. This has not, heretofore, been the practice. It is not the practice now. Parliament has left the administration of the public business to the Executive just as it has left the interpretation of the law to the courts. The negotiations with the North American Colonies are, in fact, no exception. When the Crown was about to make peace with the North American Colonies, it sought the authority of Parliament, but it did so because an Act had been passed expressly forbidding negotiations. There were also numerous Acts which extended to the North American Colonies forbidding their trade with foreign States. A statute of Charles I. expressly denied that the Crown had a dispensing power. Parliament legislated in that case, to vest in the King power to repeal and make void Acts of Parliament relating to America. The Crown could not recognize the independence of America without an immense cession of territory, yet the Act which conferred upon the King power to negotiate did not confer upon him power to cede any territories, much less other portions of his dominions. He, nevertheless, did cede the old colonies, as well as other portions, without the sanction of Parliament. Let me invite your attention briefly to what the Crown has done. Dunkirk was sold by Charles II. to the King of France without the sanction of Parliament. Parliament, when the fact became known, impeached Lord Clarendon, who was held responsible as the King's principal adviser, but it did not question the validity of the act. By the

Treaty of Breda in 1667, and by the Treaty of Ryswick in 1697, cessions and retrocessions were made by the Crown without the sanction of Parliament. In 1683 the Island of Tangiers was abandoned by the Crown in time of peace. The Island of Minorca was ceded to Great Britain by the Treaty of Utrecht, in 1713. It remained a British possession until 1783, when, by the Treaty of Versailles, it was, without the authority of Parliament, ceded to the King of Spain. The Island of Tobago was ceded to the Crown of Great Britain by the Treaty of Paris. It remained a British possession for twenty years, when, by the Treaty of Versailles, it was ceded to the Crown of France without the sanction of Parliament, the only stipulation being that the King of France should respect and maintain the titles of British subjects to their property within the Island. In 1763, both East and West Florida were ceded by Spain to the King of England, and were, in 1783, retroceded to the King of Spain, for which no Parliamentary sanction was sought. By the Treaty of 1763 the King of France ceded Canada with its dependencies to the King of England. In 1774, the whole of the country to the Mississippi River was brought under the control of Parliament, and a Constitution was given to the population by Parliament itself; and yet, in 1783, the King, without the authority of Parliament, ceded a large portion of the Province to the Republic of the United States. While the Floridas were in the possession of the King of England, he established in each a Colonial Government. British subjects were encouraged to settle in East Florida. The Colonization of the Interior of the Continent was prohibited, the better to encourage this object. It was this fact mainly, that induced Lord Loughborough to question the authority of the Crown to transfer the Floridas to Spain. He was answered by Lord Thurlow. I shall refer to this subject again at a later period. In 1824, the King of the Netherlands ceded to the King of Great Britain all his establishments in India, and the Town and Fort of Malacca and its dependencies, and His Britannic Majesty in turn ceded to the King of Netherlands Fort Marlborough, Bencoolen, and all the English possessions in the Island of Sumatra, The cession by the Crown was tacitly admitted by Parliament. The treaty was recognized as valied by (George IV., chap. 85), by which Singapore, one of the possessions ceded by the Dutch, was transferred to the East India Company. I will now refer to the South African case. In 1836, the Dutch Boers of Cape Colony were dissatisfied with the mode of compensation adopted under the Act of Emancipation. They believed the compensation provided was quite inadequate, but they were disposed to

submit. But when the Government provided that payment should be made in London only, and when the population found themselves obliged to sell their claims to brokers at the Cape for a mere fraction of the amount awarded them, they became greatly dissatisfied. Many were so exasperated that they were resolved to expatriate themselves from Cape Colony. They took with them their personal property, and retired into the interior beyond the Drakenburgh Mountains, so as to get beyond the limits of the British possessions. They settled in the valley of the Orange River and in Natal. They occupied Natal with a view to opening up a trade with Holland, and with other countries on the continent of Europe. The British at once took possession of the Natal coast to control their trade. The Boers resisted, were defeated, and were driven back into the Orange River country. There could be no question but that the Orange River country was beyond the limit of the Queen's dominions. The Government of Cape Colony had from time to time entered into treaties with Griqua Chiefs, who resided at Orange River, to protect the northern frontier of the colony against invasion. When Sir Harry Smith, in 1847, went out as Governor to the Cape, he informed Earl Grey, the Colonial Secretary, that both the Boers and natives desired that British rule should be established over them. He intimated that his position at the Cape was like that of many of the Governors who had gone out to India resolved not to further extend the British dominions; but who had ended by greatly enlarging the borders of the Indian Empire. His own view, he said, had been against the extension of the British dominions in South Africa; but he found its extension demanded both by Dutch and natives, and he recommended the Colonial Secretary to annex the Orange River country to the possessions of the Crown. The Earl Grey acted, contrary to his own judgment, but in deference to the earnest representations of Sir Harry Smith, and advised the Queen to assume the sovereignty of that country. It was soon manifest that the Colonial Secretary had been misled. Lord Grey quitted office before any change of policy could take place, but he left on record his opinion that the Crown should abandon the sovereignty of that country. He sent out Major Hogg and Mr. Owen as Commissioners to report upon the subject, and he awaited their report in order the better to accomplish his purpose. Sir John Pakington succeeded him. He concurred in the views of Lord Grey, but deferred action until the report of the Commissioners should be received, which was not done before he quitted office. The Duke of Newcastle was the next Colonial Minister. Holding the same views as his predecessors, he advised the

abandonment of the Orange River country. He took the advice of the law officers of the Crown, as to the proper method of giving effect to this policy. The views of the legal advisers of the Crown are indicated by the course taken. The letters patent, which were issued under the Great Seal in March, 1851, constituting the Orange River country a distinct Government, were revoked by other letters patent, and Her Majesty, by Order in Council, approved of a proclamation which

"Declared, and made known the abandonment and renunciation of Her dominion and sovereignty over the Orange River country, and over the inhabitants thereof."

The question which presented itself for discussion in the two Houses of Parliament was, whether the Crown had the power to divest itself of the sovereignty of the country, once that Sovereignty had been assumed? It was admitted by all that the Crown might give up places of arms, military forts and trophies of war, such as Calais, Dunkirk and Tangiers; but it was denied, by Mr. Adderly and others, that this could be done with an ordinary possession of the Crown. It was argued that if the Crown could transfer its possessions to a foreign power, it could release parties of their allegiance, it could convert its subjects into an alien population. The Duke of Newcastle, in a despatch to Sir James Clark, the then Governor of Cape Colony, expressly denied that the withdrawal of the sovereignty of Her Majesty from the country at all affected the allegiance of those who were by birth Her Majesty's subjects. The law officers who advised the Crown at the time were Sir Alexander Cockburn and Sir Richard Bethell. The Attorney General said that Colonies acquired by conquest or by cession were subject to the absolute and undisputed sovereignty of the Crown, and those who settled in such possessions did not acquire any right to take with them the laws and institutions of England, and the Crown could cede or abandon such possessions without the sanction of Parliament. With respect to territories acquired by occupancy considerable difference of opinion existed as to whether the Crown had the power of getting rid of those territories otherwise than by an Act of the Legislature. Much might be said on both sides; but it was not necessary to enter on the question in the case of the Orange River Territory, because the mode of proceeding in that case rested, not upon the principle which regulated territory by occupancy, but upon those principles which regulated territory acquired by conquest. Sir Harry Smith proclaimed the sovereignty of the British Crown over the country which the Boers occupied. They resisted his authority. They were subjugated. The Crown, without the intervention of Parliament, established its authority,

and finding that it had been misled and deceived, as to the wishes of the Boer population, abandoned the sovereignty over the country without the intervention of Parliament. Sir Alexander Cockburn said that the legal proposition upon which they had proceeded was this, that what the Crown had acquired by cession or by conquest, and over which it still retained full dominion, it could deal with without the intervention or co-operation of Parliament. In the same discussion Sir Frederick Thessiger, a distinguished lawyer, said he would not offer an opinion upon the general question as to how far the Crown could constitutionally dispossess itself of any of its dominions without the assent of Parliament. He admitted the question was one of very great difficulty. Lord Loughborough had expressed an opinion one way and Lord Thurlow another; but he admitted that in the case before them it was not essential that the sanction of Parlirment should be had in order to give validity to the abandonment. Mr. Phillimore, a very high authority, expressed strongly the opinion that the Crown had clearly the right to abandon a colony. The real check he said against abuse was the responsibility of Ministers to Parliament. He contended that the point admitted of no dispute; that English history furnished so many examples of its exercise, that it was to him a matter of surprise that any lawyer could entertain doubt upon the subject. During this discussion, Mr. Adderly contended that the Boers were British subjects and the Crown could not, by virtue of its prerogative, constitute part of its subjects an independent State. That allegiance was a contract between the Crown and its subjects. That its obligations were reciprocal; and that neither party could relieve itself from these mutual obligations—a doctrine which Sir Fitzjames Stephens expressly repudiated in a most able argument before the Judicial Committee of the Privy Council in an appeal case from the Bombay Presidency, and in his view the members of the Committee seemed to concur. Subsequently, the Crown entered into treaty obligations with the Boers, dealing with them as a foreign and independent Government; in this way doing the very thing which Mr. Adderly contended the Crown could not do. I have already referred to the fact that after the acquisition of Florida from Spain, the British Government put forward special efforts to secure its colonization by British subjects, the more effectually to protect it against the possibility of again falling into the hands of the Spaniards. In February, 1783, the King again ceded it to Spain. The treaty was made a subject of discussion in the House of Lords. Lord Loughborough concluded an elaborate speech against the terms of the treaty by particular refer-

ence to the cession of the Floridas, denying the right of the Crown, without the authority of Parliament, to alienate a portion of the British Empire, and to transfer the allegiance of British subjects to a foreign State. The report of this part of Lord Loughborough's speech is very brief, and we learn from the reply of Lord Thurlow, that much of what he said is not reported, but it is pretty clear that the point which he pressed against the Administration was this one: "You have encouraged Englishmen to colonize Florida. You have adopted a policy which led them to believe that they were not laying aside the common heritage of Englishmen when they complied with your wishes. You have by the treaty transferred Florida to the King of Spain. You have undertaken to transmute Englishmen into Spaniards. The Crown cannot transfer the allegiance of British subjects to a foreign State. That is the doctrine of Lord Loughborough, as I understand him. A doctrine from which Lord Cairns seemed to dissent during the argument of the Indian appeal case to which I have already adverted. Lord Thurlow answered Lord Loughborough, and his thundering tones and impressive manner produced such an effect on the House of Lords at the time that he was long supposed to have effectually settled the point against his antagonists. He said:

"The noble and learned Lord had thought proper to allege, that the royal prerogative does not warrant the alienation by a treaty of peace, of territories which were under the allegiance of the Crown of England. If this doctrine be true, I must acknowledge myself strangely ignorant of the constitution of my country. Till the present day of novelty and miracle I never heard of such a doctrine. I apprehend, however, that the noble and learned Lord has thrown down the gauntlet on this occasion more from knight-errantry than patriotism, and that he was more inclined to show the House what powers of declamation he posseses in support of hypothetical propositions than anxious gravely to examine a power wisely lodged in the Crown, the utility, much less the existence, of which has never hitherto been questioned. One would have thought that when a great, experienced, and justly eminent lawyer hazarded an opinion respecting a most important point relating to the Constitution of this country, he would deem it fit to produce proofs from our legal and historical records, or at least that he would attempt to show that the common opinion and consent of Englishmen went with them; but instead of this the noble and learned Lord resorts to the lucubrations and fancies of foreign writers, and gravely refers your Lordships to Swiss authors for an explanation of the prerogatives. For my own part, I at once reject the authority of all foreigners on such a subject; however full of ingenuity Mr. Vattell and Mr. Puffendorf may be on the law of nations, which cannot be fixed by any permanent or solid rule, I deny their authority. I explode their evidence when they are brought in to explain to me what may or may not be done by the Sovereign I serve. Speaking from my own judgment, from the records of Parliament and the annals of the country, I do not think the cession of the Floridas at all a questionable matter. Let the noble and learned Lord bring forward the subject regularly and I will establish a doctrine clearly contrary to the extraordinary notion now sported by him, or confess my ignorance. I will not combat the noble and learned Lord with vague declamation and oratorical flourishes—these I

contentedly leave to him with the plaudits they are calculated, perhaps intended, to gain—but with undecorated sense and simple argument. In my opinion, it is safer to stick to the process by which we arrive at the conclusion that two and two make four, than to suffer our understandings to be warped by the fashionable logic which delights in words, and which strives rather to confound what is plain than to unravel what is intricate."

Lord Chancellor Campbell observes, that in the discussion of the Ashburton Treaty, by which the Madawaska Settlement was ceded to the United States, he endeavored to raise the question, as to whether an Act of Parliament was necessary to give it validity, but was told that the prerogative to effect the transfer had been established by the unanswerable arguments of Lord Thurlow. In 1863, the subject of the cession of the Ionian Islands, which, by the Treaty of Vienna, had been placed under the protection of the British Crown, and which had, by the Crown, been transferred to Greece, was discussed. In many respects the Islands had been dealt with as a dependency. Possession of six of them had been obtained by force of arms during the war with France. Corfu, which was held by a French garrison, was surrendered shortly after the fall of Napoleon. While they were in the possession of the British Government, expensive fortifications were erected upon them, and for which Parliament had voted the money. They had no external political relations, except through the Government of the constitutional power of ceding them to a foreign nation. He said nothing as the advisability of such a course. All negotiations and conclusions of treaties rested with the Crown. If the Crown abused its authority the advisers of the Crown were responsible, and were liable to the censure of Parliament, and even to impeachment, if they advised the Crown to adopt a measure injurious to the Empire. There were precedents of cession made by treaty. The magnificent Island of Java was thus ceded, and, injudiciously, in his opinion, but he believed that in respect of that transaction it never was asserted that the authority of the Crown was overstepped. I will now refer to the most recent transaction of this class, the attempt to extend the authority of the Crown over the Boers of the Transvaal, their resistance, the negotiations of the Government with them, and the agreement of Her Majesty to recognize them as a protectorate instead of a possession of the British Crown. The history of this transaction bears in every particular a close resemblance to that of the Orange River Free State. Sir Theophilus Shepstone misled Lord Carnarvon, as Sir Harry Smith had before misled Lord Grey. The Boers of the Transvaal resisted the attempt to treat them as colonists just as the Boers of the Orange Free State had done

twenty-four years earlier, The Government of Mr. Gladstone, when it learned the real feelings of the Boers, adopted towards them the same policy that had been taken towards their western neighbors. They were more successful than their neighbors had been in resisting the British troops, but this did not prevent the Government from meeting their wishes as soon as it was known, beyond all doubt, what their wishes were. Her Majesty decided that negotiations should be opened, and treaty stipulations were made with those who were technically her subjects. The policy of the Government has been fiercely criticised; but the authority of the Crown to make these treaty stipulations and to give up the country as a possession without the sanction of Parliament, has not been raised. In the discussion which took place before the Judicial Committee in 1875-6, but which was ultimately disposed of on other grounds, Mr. Forsyth, who was arguing against the right of the Crown to cede territories in the time of peace, said, that in order to insure peace the Crown might cede possessions which had never been the subject of Parliamentary legislation, but could cede no others. Lord Chancellor Cairns asked him if he had any authority for that proposition. He said nothing beyond this fact, that to admit it involved the power to interfere with Parliament. He argued that the right to cede a territory at the conclusion of a war, was a right based upon supreme necessity, and he quoted Puffendorf to the effect that the power of a Sovereign is not such as to enable him to transfer his kingdom or his people without their consent; and that in the case of a partial alienation of territory, the consent of both the inhabitants of the parts retained and the parts ceded are equally required. When Savoy and Nice were ceded by the King of Sardinia to the Emperor of the French, the people were asked to consent to the cession. Lord Selborne pointed out to Mr. Forsyth that, if that doctrine were recognized, Parliament, no more than the Crown, would have a right to make a cession. The people themselves must be consulted. Lord Chanceller Cairns said that—

"The gist of the authority was this, that, if the inhabitants of a territory, cut adrift, are physically strong enough, they are morally justified in asserting their independence."

Sir Vernon Harcourt and Sir Fitzjames Stephens cited several cases of colonies for which Parliament had legislated, or in which the colonies had Legislatures of their own, where the Crown had ceded the territory without the sanction of Parliament. There was the case of the cession of Bencoolin to the Dutch, of parts of Nova Scotia and Quebec to the United States, of parts of Newfoundland

—St. Pierre and Miquelon—to France, and of the Gold Coast in 1867 to the Netherlands. Mr. Stephens instanced at least twenty-three cases in the British East Indies where the Governor General, not possessed of that paramount authority which the First Minister alluded to, possessed but a limited authority, entered into negotiations with the native princes, and, by transferring territory to them, obtained cessions of territory from them, altered boundaries of States and Provinces which were adjoining, which was establishing a better boundary where necessary—I say he instanced twenty-three cases of this sort as having occurred in India alone, and there were many cases where Parliament had legislated and where Legislatures had been established, and where the Crown had not paramount authority.

Sir JOHN A. MACDONALD. Had not paramount authority?

Mr. MILLS. Certainly not, because where Parliament is fully established the plenary jurisdiction is in Parliament and not in the Crown, and that distinction, the hon. gentleman will find, is made through all these cases. It was upon that, principally, that the parties, who were denying the power of the Crown of its own motion to cede territory in the East India cases, relied. Now, there is another class of cases in which the Crown has acted without the consent of Parliament, and where its power to act has never been called in question. I refer to the class of cases to which this one more particularly belongs—the class of disputed territory. I will refer briefly to a few of these upon this continent. The territories on the north-western coast of America were, for some time, in dispute between the United Kingdom and Russia. The English Government claimed the whole coast south of Mount St. Elias to the forty-second degree of north latitude. This claim was based upon prior discovery, and upon the partial occupation of the country by Canadian fur-traders. Russia claimed the coast as far south as the Portland Channel, basing her claim upon discovery and actual occupation. In 1825 the claim of Russia was conceded, subject to the right of the British people to navigate the rivers which flow from the interior country to the sea. This concession of territory in the settlement of the boundary was made without the prior authority or the subsequent ratification of Parliament. And let me here call your attention to the provisions of the Treaty of St. Petersburgh for another purpose. England and Russia occupy, under the Treaty of St. Petersburgh, very nearly the same position that France and England occupied under the Treaty of Utrecht in reference to Hudson's Bay.

Upon the western coast, under the Treaty of St. Petersburgh, Russia holds the shore and England the interior of the country. In the vicinity of Hudson's Bay, under the Treaty of Utrecht, England held the coast and France occupied the interior of the country. Let us see what principle was recognized and acted upon in the Treaty of St. Petersburgh. To Russia was ultimately conceded the coast, on the ground of prior occupation, but did this admission entitle Russia to claim the whole country to the sources of the rivers? The treaty itself negatives any such doctrine. The treaty did not admit the right of Russia to so wide an expanse of country. In most cases the rivers rise far in the interior—beyond the mountain range which girds the coast. That range is, in fact, not the watershed. The treaty simply conceded the principle that the Russian authorities only could claim a reasonable extent of country in the vicinity of the shore. In no case was it to pass the coast-height, and if the height was more than thirty miles from the shore, then the boundary was to be drawn at the distance of thirty miles and not upon the height. I shall undertake to show that the principles of public law which underlie the provisions of the Treaty of St. Petersburgh, are to be observed also in reference to the respective claims which once existed of the two Crowns to the basin of Hudson's Bay; that what was done in the Treaty of St. Petersburgh by express words was done at the Treaty of Utrecht by lines drawn upon a map; and that wholly apart from any express treaty stipulations and from the principles of public law applied to the varying fortunes of the Company, that the Government of Great Britain, in granting charters by which dominion was to be acquired for the Crown, and property and powers of Government for those to whom the charter was granted, no matter how extensive the dominions formerly granted might be, the limits were determined by the actual occupation and dominion of those to whom the grant was made. I will now refer to the disputed boundaries between the Provinces of Lower Canada and New Brunswick on the one side, and the State of Maine on the other. By the Treaty of 1783, the boundary between the British Possessions and the United States in this region was to be a line drawn directly north from the source of the St. Croix River, to the highlands at the north-west angle of Nova Scotia which divides the rivers that fall into the Atlantic Ocean from those which fall into the River St. Lawrence; thence southwesterly along the said highlands to the source of the Connecticut River, and down that river to the 45th parallel of latitude, and thence due west to the St. Lawrence. At an early day, differences arose as to the location of the

highlands and the north-west angle referred to in this article of the treaty. Great Britain claimed that the highlands mentioned were south of the St. John River. The United States insisted upon going north to the highlands near the St. Lawrence. Shortly after the signature of the treaty, doubts also arose as to the river referred to by the name of the St. Croix. In 1798, it was agreed the one now so designated was the river meant, and that the north-east source of that river should be taken as the starting point of the line which the treaty required should be drawn directly north to the highlands. An exploration of the country soon made it obvious that a great deal of difficulty would be experienced in finding a line conformable to the words of the treaty. During the Government of Thomas Carleton, about the year 1790, many settlers from New Brunswick moved into the Madawaska District, and had, there, grants made to them by the Governor of New Brunswick. The Government of the United States earnestly protested against the occupation and government of the country by the English. The position taken by the British Government was this: disputed territory remains with the original party until the cession is made absolute. There could be no doubt that the territory once belonged to Great Britain; that she had not actually transferred more to the United States than she admitted by her own construction of the treaty; that she was, therefore, still vested with the exclusive jurisdiction over the disputed country; and that she could not consent to lay it down until it was shown that her construction of the Treaty of 1783 was wrong. She said that neither the question of title to the sovereignty of the country, nor the rights of either party, were prejudiced by this rule. Upon these principles she took her stand, and to them she adhered. The United States, on the contrary, maintained that the disputed territory was wholly unoccupied at the time the Treaty of 1783 was made; that the rule laid down by Great Britain was a rule applicable to ports, military towns and garrisons where there was actual occupation, and where because there was actual occupation, there must be an actual formal cession. But this rule has no applicability to an unoccupied country; that the possession of the Crown of Great Britain to the territory in dispute was at the time of the treaty a constructive possession, because the territory was unoccupied, and the renunciation by treaty was an adequate transfer of the country; that the United States did not acquire their rights to the territory by the Treaty of 1783, but by a force of arms. The Treaty of 1783 recognized, but did not confer territorial rights. It provided for a mutual partition; and the boundary set forth

simply marked the limits between the territories of the two nations. In a case not long since, before the Judicial Committee of the Privy Council, Lord Cairns expressed opinions in consonance with the views enunciated in this discussion by the Americans, and there can be little doubt that the right of England to hold the disputed territory was not because it was not actually ceded until she gave formal possession, but because the settlement was hers. The actual dominion was hers, and it was necessary to prove her to be in the wrong, before she would be called upon to make a surrender or to submit to joint occupation. The position in this respect of Great Britain in the valley of the Upper St. John, is the position of Ontario in the disputed territories. She has always claimed them, she has exercised jurisdiction for more than thirty years over the population. They are represented in this House as belonging to her, and she has a right to maintain her authority, apart from any award, against all encroachment, and by whatever means is necessary to make her defence of her dominion effective. In 1842, a compromise line was agreed to between the Government of Great Britain and that of the United States. Instead of following a height of land they followed the St. John River. According to the English view, a large extent of territory was surrendered to the United States. Mr. Campbell, afterwards Lord Chancellor, suggested that as a large extent of territory which had for half a century been held by the Province of New Brunswick, and legislated for as a part of that Province, was about to be given up, the consent of Parliament ought to be had. But the law officers of the Crown dissented from his view. They held that such consent was unnecessary, and upon the authority of the Crown alone, the Madawaska Settlement, and all that section of country west of the meridian of the St. Croix River, and lying between the St. John and its southern watershed, was surrendered to the United States. The territory west of the Rocky Mountains, between the forty-second parallel and the parallel of fifty-four degrees forty minutes north latitude, was, for many years, claimed both by the United States and the United Kingdom. By conventions, to which the Crown alone was a party on the side of Great Britain, the whole country was opened to colonization and settlement by both Governments. By the Treaty of 1846, the Government of Great Britain surrendered to the United States her claim to the whole country south of the forty-ninth parallel, without the sanction of Parliament. I might before have referred to the fact that the boundary between Canada and Louisiana under the Treaty of Paris, between the Mississippi and the Rocky Mountains was beyond

all doubt the parallel of Lake Itasca, and yet by the Convention of 1818, the Crown agreed to a boundary nearly one and a-half degrees further north, surrendering to the United States by this convention and by the Treaty of 1846 a strip of country more than ninety miles in width, and extending from the source of the Mississippi to Vancouver Island, without any Parliamentary sanction in either case. I need not refer to other cases. The instances which I have given show, beyond question, what has been the practice and what has been the law in the case. They show that it was the business of the Administration to deal with the question. That the prior sanction of Parliament was not in any of these cases deemed necessary, and that subsequent ratification has never been sought. It would have been an unprecedented course to have taken the line which the right hon. gentleman says was the only one which we could constitutionally follow. So far as I know, there is not an instance in the whole history of the United Kingdom in which the views taken by the Prime Minister and his Government in this case was ever acted upon. I am sure he will not find a single precedent to support him, and the uniform usage of two hundred and twenty years has settled this point, at all events, against him. I do not say that what the Crown may do in the United Kingdom the Crown can do here: but I say the relation between the Crown and Parliament is the same here as there. I have shown on this class of questions the Crown acts without the direct sanction of Parliament, and so far as our powers extend the relation is the same. But, Sir, even though it were true that the sanction of Parliament was necessary to give validity to the arbitration, that sanction was obtained before the arbitrators sat. The Government came down to the House and asked for an appropriation to pay the expenses which would be incurred by arbitration. If any one was opposed to arbitration it was open to him to take that line. No one did object, and Parliament expressed its approval of settlement by arbitration, by voting the necessary monies for the purpose. At least two years elapsed after that money was voted before the arbitration sat. It was open to the right hon. gentleman, or to any of those who then sat in Parliament, and who now support him, to have taken exception to that mode of settlement, but it was not done. If the right hon. gentleman believed that Parliament did not favor arbitration, why did he not move against it when the appropriation was asked for? Was it because he believed it could not succeed? It may be so. I have no doubt he could not have succeeded. But what does this establish? Why, that Parliament knew what it was doing, That it approved of the mode of settlement, and voted the necessary means to enable

the Government to give effect to its policy. The sanction, then, which the right hon. gentleman says the Government ought to have had, it in effect did have; so that it is obvious that on none of these grounds can the award be successfully attacked. The right hon. gentleman, in pressing through the Manitoba Bill during the last hours of last Session, told us that there was no award; that the arbitrators had set out a conventional line; that this was outside the order of reference; and that, consequently, they had not done what they were alone authorized to do; and he referred to the award made by the King of the Netherlands in the case of the Maine boundary, in confirmation of the doctrine which he enunciated. Now, I deny that there is any similarity between the award made in that case and in this. And I also affirm that if there was, that that case does not sustain the line of action which he has taken or proposes to take. Let us look at the facts in that case. On the 29th September, 1827, the English Government and the Government of the United States agreed to submit the points of difference between them to an Arbiter; and by a subsequent convention they agreed that the Arbiter should be the King of the Netherlands. They submitted three points under the Treaty of 1783 to the King for his decison. I will read them to the House:—

"1st. Which is the spot designated in the Treaty as the north-west angle of Nova Scotia, and which are the highlands dividing the rivers that empty themselves into the River St. Lawrence from those falling into the Atlantic Ocean, along which highlands is to be drawn the line of boundary from that angle to the north-west head of the Connecticut River?

"2nd. Which is the north-west head of the Connecticut River?

"3rd. Which is the boundary to be traced from the River Connecticut along the parallel of the 45° of north latitude to the River St. Lawrence, called in the Treaties Cataraqui?"

The King of the Netherlands decided the second and third points absolutely; but as to the first, he declared it was impossible to find a north-west angle conformable to the words of the treaty. He held that the highlands sought for might be simply a summit level from which the waters flowed in different directions. 2nd. That the ancient boundaries of the North American Provinces were not maintained by the treaty of 1783; that they had never been distinctly ascertained, and in no way aided in the determination of the question. 3rd. That the highlands contemplated in the Treaty should divide immediately, not mediately the rivers flowing into the St. Lawrence and the Atlantic. That the word "divide" required contiguity in the things divided. That the northern highlands divide rivers falling into the Bay of Chaleur, from rivers falling into the Bay of Fundy. That the southern highlands divide the rivers flowing into the

Atlantic from those flowing into the St. John; that neither height of land answers the description in the treaty; and that no award can be adjudged without departing from the principles of justice as between the two parties. The King adjudged the St. John River, lying midway between the two heights of land, as an equitable boundary. When the award was made and a copy of it given to Mr. Preble, he addressed a letter to Baron Verstolk de Solen which he concludes with the following observations:—

"It is not the intention of the undersigned, in this place, to question in the slightest degree the correctness of His Majesty's conclusions. But when the Arbiter proceeds to say that it would be suitable to run the line due north from the source of the River St. Croix, not to the highlands which divide the rivers which fall into the Atlantic Ocean from those which fall into the River St. Lawrence, but to the centre of the River St. John, thence to pass up the said river to the mouth of the River St. Francis to the mouth of its south-westernmost branch, and from thence by a line drawn west into the point where it intersects the line of the highlands as claimed by the United States, and only from thence to pass along the said highlands which divide the rivers which fall into the Atlantic Ocean from those which fall into the River St. Lawrence to the north-westermost head of the Connecticut River, thus abandoning altogether the boundaries of the treaty and substituting for them a distinct and different line of demarcation, it becomes the duty of the undersigned, with the most perfect respect for the friendly view of the Arbiter, to enter a protest against the proceeding as constituting a departure from the power delegated by the High parties interested, in order that the rights and interests of the United States may not be supposed to be committed by any presumed acquiesence on the part of their representative near His Majesty the King of the Netherlands."

The award made by the arbiter was submitted by the President to the Senate, who declined to confirm it, and recommended further negotiations. The technical ground upon which the Senate based their refusal, was, that the decision of the King was outside the order of reference; that he had abandoned the charater of arbiter and assumed that of mediator; and that the decision, not being in conformity with the submission, could not be carried into effect. The real ground of the Senate's refusal, as stated by the Secretary of State, was, that the State of Maine refused its consent to any compromise and insisted upon the boundary given to it by the Treaty of 1783, whatever that boundary might be. I refer to this part of the history of that disputed boundary, because the First Minister has undertaken to drag it into the discussion for the purpose of showing that the Government were warranted in repudiating the award made by the arbiters. It in no way sustains his position. The King of the Netherlands was asked to construe the Treaty of 1783; he was asked to indicate a boundary in accordance with its provisions, and in his award he says: "This cannot be done, and I advise the parties to accept something else." The American Secretary of State does not object to the King's recommendation; he does not

say that it is unfair; but he says, "We cannot get the State of Maine to agree to it;" and he intimates his regret that the arbiter did not make his award without stating that it was not in conformity with the treaty. The arbitrators in this case made no declaration like that made by the King of the Netherlands. They did not say that they could find no boundary in accordance with the principles of public law. and with acts of State upon which a proper decision must rest. The whole subject was discussed. Everything which could be found bearing upon the case was considered. The contention of the right hon. gentleman and of the Hudson's Bay Company were known. The cases submitted by each party showed beyond all question what the issue was. The arbitrators do not suggest a conventional boundary. They do not say that they have been unable to find the true legal limits of Ontario. On the contrary, they say they were appointed for this very purpose, and they determine and decide that the northerly boundary is the Albany River, and the meridian of the north-west angle of the Lake of the Woods is the boundary upon the west. They keep themselves strictly within the order of reference. They do not give advice; they pronounce a decision. It is perfectly clear, then, that this award is in no particular like that made by the King of the Netherlands, and yet in that case the United States Government did everything in its power to persuade the State of Maine to consent to the line suggested by the arbiter. It is plain, then, that the contention of the First Minister is wholly erroneous. Let me here, however, remind him what was done in another case. By the terms of the British North America Act, the excess of the debt of old Canada beyond the amount assumed by the Federal Government was to be charged to Ontario and Quebec. Each was to appoint an arbitrator, and the Dominion Government was to appoint a third, and these three were to decide what portion of this excess was to be assumed by each of these Provinces. The arbitrators were appointed. They sat, and the subject submitted to them was investigated. Quebec was dissatisfied, and instructed her arbitrator to withdraw; and her Government said then, in that case, what the right hon. gentleman says in this, that there was no award. What was done? Did the Governments of the two Provinces throw the award to the winds, and go to the Judicial Committee of the Privy Council for a second examination into the merits of the case? Not at all. But they did submit this question: "Has there been any award, and is it binding upon the parties?" And the Judicial Committee of the Privy Council advised the Crown that a valid award had been made, and that the parties

were bound. That is a precedent which the hon. gentleman might follow, if it can be possible that he has any doubt upon the subject. I do not say that it justifies an appeal, because that arbitration was not a voluntary one; but I say if he is resolved to break faith and appeal it points to what the issue should be. I do not speak for the Government of Ontario, but as a member of this House, and I ask the right hon. gentleman why he does not say to Mr. Mowat:

"I do not regard the award made by Sir Edward Thornton, Sir Francis Hincks and Chief Justice Harrison as a valid award. I do not think the Crown had power to appoint arbitrators to deal with this question without the direct and formal sanction of Parliament. I think the arbitrators went outside of the order of reference in making a decision, and I wish, for these reasons, to have a decision of the Judicial Committee upon the validity of the award."

My impression is, his wish would be gratified. The right hon. gentleman knows that that is the issue, and the only issue which he can raise at this moment. It blocks the way to every other, and if he believes he is right in his contention, he ought not to hesitate. If the decision is against him, the question is settled. If it is in his favor he will have cleared the way to the consideration of the whole question again upon its merits.

Sir JOHN A. MACDONALD. But Ontario offers to leave that to the Privy Council.

Mr. MILLS. There may be some offers made that have not been brought down to us. I think the hon. gentleman is mistaken.

Sir JOHN A. MACDONALD. Read the last despatch.

Mr. MILLS. I have read that. The Government in their despatch referred to a report made by a Committee of this House, and make a paragraph in that report an excuse for repudiating an award which cannot be disregarded without dishonor. I regret that time will not permit me to make a minute analysis of that report, and to show how utterly worthless it is. We know that a minority of the Committee declared that they had not even an opportunity of reading it. The chairman again and again put arguments instead of questions, secures from the witness an echo of his own views, and is almost invariably wrong both in point of fact and in point of law. The book, too, contains an immense mass of matter upon points wholly irrelevant. It contains opinions which are of no value, which are not evidence, and the men who gave them are separated by a hundred years from the events about which they testify. Let me invite the attention of the House, in the first place, to the testimony of some of the witnesses, and I will begin with that of Mr. Justice Johnson. I have

no hesitation in saying that the evidence which he gave before that Committee was in the highest degree discreditable to him. He seemed to think that it mattered not whether his statements were true or false. Had an ordinary witness gone before Mr. Justice Johnson's Court and talked as loosely and as inaccurately, he would have been utterly discredited. He told the Committee that Lord Selkirk, in the first instance, acquired his title to the country which he claimed, from the North-West Company. Now, this was not true. Lord Selkirk obtained in June, 1811, a grant from the Hudson's Bay Company for the whole Basin of the Red River. The North-West Company never pretended to have any title to the soil. They contented themselves with denying the pretensions of the Hudson's Bay Company, who came to the country many years after the North-West Company had been established there. Mr. Justice Johnson informed the Committee that the boundary of Upper Canada on the west was always considered to be the line running north from the confluence of the Ohio and Mississippi. He told the Committee that the boundaries of Assiniboia extended to the boundary of Upper Canada, and that that was the Height of Land, a statement wholly at variance with the one which he had made before as to the boundary of Ontario upon the west, and wholly at variance with the grant. Mr. Justice Johnson said that the two law officers of the Crown in England stated that if the Crown saw fit it could establish Courts of civil and criminal jurisdiction in Assiniboia; and he argued that this declaration was entirely at variance with the possibility of its being a part of Upper Canada, because Upper Canada having been granted legislative powers, was vested with the right of constituting Courts for itself. Will the House believe that the law officers of the Crown do not make the slightest allusion to the colony of Assiniboia. The subject was not for one moment under their consideration. The law officers of the Crown discussed, in the communication referred to, the powers of the Hudson's Bay Company within their chartered limits; but they do not venture to state what those limits are. Mr. Johnson showed himself, indeed, strangely ignorant of the boundaries of the district which the Hudson's Bay Company in 1811 professed to convey to Lord Selkirk, and which he again, in 1839, surrendered to the Company. So much of Lord Selkirk's grant as was north of the United States boundary, they created into a colony, and the eastern limit was the Winnipeg River. Mr. Johnson says that the Colony of Assiniboia was recognized as a *de facto* Crown Colony, and this seems to have been an opinion which the Chairman was most anxious to elicit from several of the witnesses. Now, let me ask what is a Crown

Colony? It is neither a charter nor a proprietary Government. It is an ordinary Provincial establishment, ruled by a Governor, appointed by a Royal Commission, and the extent of whose authority is set forth in the Commission and in the instructions which usually accompany it; and he is assisted in the discharge of his duties by a Council appointed by the Crown, but not by a representative Assembly. This was not the character of the Colony of Assiniboia. Lord Selkirk had obtained a grant from the Hudson's Bay Company in 1811, which included 116,000 square miles. The Company assigned to him not only their title to the soil, if they had any, but along with it, their powers of government within the limits of the district so conveyed. Could they do this? Could they, having been made by the Crown a charter government create another charter government for a part of the territory so conveyed? Was the colony of Lord Selkirk a proprietary colony, or was it a mere voluntary association. If I were compelled to choose between the opinions of Mr. Justice Johnson and the hon. member for Algoma upon the one side, and Mr. Spankie, Sir Arthur Pigott and Lord Brougham on the other. I should prefer to follow the latter. These distinguished lawyers say that—

"The Company could not confer power upon Lord Selkirk to appoint Governors, Courts of Justice, or exercise any independent authority, nor could they, directly or indirectly, transfer their authority to him to be exercised by him in his own name. Supposing the grant of land to be such a grant as falls within the power of the Company to make, their superior Lordship and authority would continue as before and must be exercised through them."

This opinion is not only upheld by a consideration of the legal principles involved, but also by decided cases. In the year 1620, James I made a grant to the Duke of Lennox and others, known as the Plymouth Company of New England. The religious sect known as Brownites were driven out of England by persecution. They purchased from the Plymouth Company all the country along the coast from three miles north of the River Merimac to three miles south of the River Charles. They obtained from the Plymouth Company not only a transfer of the land, but an assignment of the Company within the limits which they had purchased. They were advised that they could not exercise, legally, the powers of Government which had been conveyed to them them. They applied to Charles I and obtained a charter from him conferring upon them power to govern the colony. In the year 1628, the King granted a charter to Sir Henry Rosewell and others making them a body politic by the name of "The Governor and Company of Massachusetts Bay in New England." By their charter they were

to exercise their powers of Government in England. They transferred them to America, to the actual settlers, which some years later was held to be *ultra vires*. In 1629, Captain John Mason obtained from the Plymouth Company a grant of the country which afterwards was called the Province of New Hampshire. The Colony of Massachusetts claimed the same country as included within her limits. She established her jurisdiction over it, and governed it for forty years. The contestants brought the case before the King in Council, in 1679. The case was decided against Massachusetts, but the Council advised the King that the Plymouth Company could not assign or delegate away their powers of Government, and that the consent of the Crown not having been given, Captain Mason had no political authority. The Crown recognized him as proprietor of the territory, and issued a Commission for its Government. I might give other cases, but these are sufficient. Whatever Government existed then in the Red River settlement was simply a voluntary association. There have been several such within the British dominions. After the re-assignment of the Red River Company to the Hudson's Bay Company, they might, no doubt, establish a Government professedly under their charter, which the Crown did not question, just as it did not question the authority of Massachusetts in New Hampshire, or in Maine, nor the authority of Lord Baltimore in Deleware, until a decision was sought; but I will say here that its authority never entered there, and if it did it was forfeited by an attempt to convey it away. The hon. member for Algoma asked the Hon. D. A. Smith a number of questions and addressed to him a number of arguments, many of which were wholly irrelevant. He said: "You, then, consider the height of land on the St: Lawrence watershed to be the southern boundary of the territory of the Hudson's Bay Company?"—Ans. "The Hudson's Bay Company have always held it to be so." Mr. Smith no doubt spoke of the contention of the Hudson's Bay Company of late years; but down to the period of the Treaty of Utrecht, they never put forward any such contention, nor did they for many years later. The hon. member for Algoma has undertaken to show that the whole of the country west of Lake Superior was called the Indian country, and the Act of 43 George III, which gave to the Courts of Upper and Lower Canada jurisdiction over crimes committed in the Indian territories, was enacted to meet the case of crimes committed in the territories awarded to Ontario. But no such instance can be found: both Lord Selkirk and the Right Hon. Edmund Ellice declare that the Act was passed in consequence of crimes which had been committed in the vicinity of Lake Athabaska. They said it was passed

in consequence of contests between the two North-West Companies. Mr. Woden had been shot by one Pond, and was acquitted on the ground that the Court had no jurisdiction in the place where the crime was committed. Lord Selkirk says that the immediate cause for the passage of the Act was the shooting of one King by Lamotte in the vicinity of Lake Arthabaska. He describes the event as follows:—

"In the winter of 1801-2, Mr. John McDonald managed the affairs of the old North-West Company in the Arthabaska country; Mr. Rocheblave, those of the new company in the same district. Mr. McDonald had under his command a clerk of the name of King, an experienced man, of a bold and active character, and of a herculean figure. Mr. Rocheblave's assistant was Lamotte, a young man of a respectable Canadian family, of a spirited and active disposition, but much younger and of less experience among the Indians, and not to be compared to King in point of personal strength. In the course of the winter two Indians arrived as deputies from a band with which both parties had had transactions, to inform the traders that they had furs ready at an encampment at the distance of four or five days' march. King was sent with four men to collect those due to the old North-West Company—Lamotte with two men for those due to the new Company. Both of them were charged to use the utmost diligence and to defend the rights of their employers with courage. They set out accordingly on their mission, and great activity and address were used by each to get the start of the other, but without success on either side. When they reached the Indian encampment, both parties proceeded to collect the furs due to them, but King, by means of the superior number of his assistants, got possession of all the furs except one bundle which was delivered to Lamotte by the same Indian who had come as a delegate to the new Company. King then came to Lamotte's tent, accompanied by all his men, armed, peremptorily demanding that bundle also; threatening violence and declaring his intention to take the furs by force if they were not given up to him. Lamotte was determined to defend the property of his employers to the last extremity, and warned King, that if he ventured to touch the furs, he should do so at his peril. King, nevertheless, was proceeding to put his threats into execution and to seize the bundle when Lamotte pulled out his pistol and shot the robber dead on the spot. King's men would have revenged his death, but the Indians interfered and expressed their opinion that he had merited his fate. Though it would be difficult to quote an instance of homicide more decidedly justifiable, all Canada rang with the claims of the old North-West Company against this murder, as they chose to term it. It was upon this occasion that the Act of 1803 was obtained, under the idea that the case could not be brought to trial, though it might undoubtedly have been tried at Westminster under the Act of Henry VIII."

I think this is sufficient to show where the crimes happened which gave rise to the Act 43 George III. The hon. member for Algoma refers to the killing of McDonell by Mowat, but that was six years after the passage of the Act, and the question of jurisdiction was not raised. The name Indian Territories was a name given to the British possessions in North America not included within the limits of any Province. The country between Georgia and the Mississippi was called Indian Territory, and so too was the country beyond the Alleghany Mountains. After the Province of Quebec was carved out of Canada by the proclamation of 1763, the remaining portion was called the Indian

country; and when the Province of Quebec was enlarged by the Act of 1774 the Indian country was the British possessions which lay to the north and north-west beyond it. The Act of 1803 provides for the trial of persons who have committed crime in the possessions of the Hudson's Bay and in the Indian Territories, by the Courts of Upper Canada or Lower Canada. I shall not waste the time of the House by discussing the question of jurisdiction under the Act of 1803 or of 1821. Those Acts were passed for the purpose of providing for the punishment of crime committed in distant parts of North America, and it was no part of the duty of the Courts to enquire into the question of territorial limits where those limits had not been actually marked out, and especially when traders going to the unpeopled parts of the Provinces were exposed to the same dangers as in the country for which the Act was intended to provide. It is not by considerations of this sort that we can arrive at any conclusion as to the boundaries of Ontario. I purpose now to consider the limits given to the Province of Quebec by the Act of 1774. The right hon. gentleman has given to that Act a construction which, in my opinion, it will not bear, and which it can be shown would have defeated the object of Parliament, as set forth in the Act itself. It is a sound rule of construction that to interpret a law properly, it is necessary to look at all the surrounding circumstances. Let us do so in this case. Let us notice how this territory came to be a British possession; and how the Government proposed from time to time to deal with it, until they established the Province of Upper Canada. Both Great Britain and France claimed the country between the Alleghany Mountains and the Great Lakes. The dispute led to a war, and the war ended in the cession of Canada,—not precisely as it had been held by France, but as it was marked out by the 4th and 7th Articles of the Treaty of 1763. While Canada was a French possession, it included the country west of the Mississippi and north of the Missouri River. At the cession France retained that part of Canada west of the Mississippi River as a part of Louisiana, and gave up so much of Louisiana as lay east of the Mississippi, as a part of Canada. But all the territory claimed by France to the north and west of the source of the Mississippi, and over which the Governor of Canada had exercised jurisdiction, was surrendered to Great Britain, and when the Province of Canada is spoken of by the English Government, or in Acts of the Imperial Parliament, it is the territory that France surrendered, to which this appellation is given. After Canada had been ceded to Great Britain, and before the King, by his proclamation, established the Pro-

vince of Quebec, that is between the 10th February, 1763, and the 7th of October of the same year, the country was called the Province of Canada. On the 30th April, 1763, the King issued a Commission to Henry Ellis, granting him the offices of Secretary and Clerk of the Council of the Province of Canada; and on the 25rd of September Nicholas Turner received a Commission granting him the office of Provost Marshal of the Province of Canada. In October, 1763, the King, by his proclamation, established the Province of Quebec, which was carved out of the Province of Canada with the following limits:—

"Bound on the Labrador coast by the River St. John and from thence by a line drawn from the head of that river through Lake St. John to the south end of Lake Nipissing, from whence the said line, crossing the River St. Lawrence and Lake Champlain in 45 degrees of northern latitude, passes along the highlands which divide the rivers that empty themselves into the said River St. Lawrence from those which fall into the sea, and also along the northern coast of the Baie Chaleurs and the coast of the Gulf of St. Lawrence to Cape Rosiers, and from thence crosses the mouth of the River St Lawrence by the west end of the Island of Anticosti, terminates at the aforesaid River St. John."

These were the original boundaries of the Province of Quebec. The intention was to limit as much as possible the territories within which the peculiar laws of France should govern the population. It was intended that the French settlements which were scattered over the remaining portions of Canada should be put an end to, and the inhabitants transferred to other colonies. Sir William Johnson, on behalf of the British Government, had promised the Indians that this should be done; and the Indians pressed upon them the fulfilment of their engagement. Lord Shelburne had proposed to establish three more colonies, one having its centre at Detroit, one upon the Upper Ohio, and a third in the Illinois country. But this view was resisted by the Lords of Trade and Plantations. Captain Pittman was sent to the Illinois country to take the Census, and to report upon its condition; and the Commandants at other points were required to give like information. In 1772 proclamations were issued commanding the French to retire within the jurisdiction of the other colonies. A considerable number of the French had retired west of the Mississippi. They built forts; they supplied themselves with ammunition and arms; and it soon became evident that they could be more easily controlled within the territory than outside of it, and the policy of driving them from the country was abandoned. Between 1763 and 1791 we have three distinct phases of English policy. First, the restriction of that arbitrary system of Government which had prevailed during the *regime* of France and which was confined in the Province of Quebec, within very narrow limits. Second, its extension by the Quebec Act to

a large part, if not to the whole of Canada; and in the third place, its limitation again by the establishment of the Province of Upper Canada. It was the policy of most English Ministries to confine the English colonists to the east of the Alleghanies, and it was thought that this could in no way be so effectually accomplished as by the extension of French law over the whole country to the Mississippi. The French and English colonists had, for nearly a century, been engaged in border warfare, and the prejudice of the English colonists had been intensified by their long animosities. The State papers of the period also disclose that, as the English colonies grew more dissatisfied with the English colonial policy, the Imperial Government were more anxious to conciliate the French people. And, as indications of revolt became more marked, the Government at home resolved, in the end, to put themselves in a position by which the insurrection could be attacked on the one side by the fleet and in the rear by the French and their Indian allies. The English Government believed what had again and again been said, that, however much the French disliked England, they disliked her colonies still more. The policy upon which the Government had determined is as plain as noonday. Their reasons for that policy are equally obvious, and the preamble to the Quebec Act states this explicitly. It says that:

"There is a very large extent of country within which there were several colonies and settlements who claimed to remain there under the faith of the Treaty of Paris, who were left without any provision being made for the administration of civil government, &c."

We have here a distinct indication of the purpose of the Act. It was to provide a Civil Government for the French settlements which were not provided for by the proclamation of 1763. As the Quebec Act was carried through the House of Lords it extended the boundaries of the old Province in this way:

"All the said territories, island and countries heretofore a part of the territory of Canada, in North America, extending southward to the banks of the River Ohio and westward to the banks of the Mississippi, and northward to the southern boundary granted to the Merchants Adventurers of England trading to Hudson's Bay, &c., are hereby, during His Majesty's pleasure, annexed to and made part and parcel of the Province of Quebec as created and established by the said royal proclamation."

When the Bill reached the House of Commons two objections were made to it. The one was that they admitted in this Bill that the territory which they proposed to annex had formed part of Canada, which they had denied in their controversy with France; and the other was, that they might embrace in such an indefinite description portions of

New York. There was no attempt whatever to vary the policy of the Government. There was no attempt to give to the Province more restricted limits than those which the Government had resolved on. To meet the first objection they struck out the words, "heretofore a part of Canada," and substituted the words, "belonged to the Crown of Great Britain;" and to meet the second objection, they defined a boundary on the south throughout its whole extent and described the country by its direction from this boundary to the country limiting it upon the north. Mr. Burke, the agent of New York, insisted upon having the southern boundary defined. New York had ceased to be a chartered Government, and had become a Provincial Establishment. A treaty not long before had been made with the Indians which made the whole western part of the Province an Indian reservation, and it was to prevent the western part from being included in the Province of Quebec that Mr. Burke insisted upon the boundary being laid down upon the south. Virginia claimed a large section of country north of the Ohio River as being within her charter. But the Bill, in order to protect her claim, provided that—

"Nothing therein contained should in anywise effect the boundaries of any other colony."

There is no room to doubt the meaning of this section as it originally stood. It is the territories, islands and countries that are extended southward, westward and northward. It will be seen, too, that from the word "Mississippi" to the end of this section, except a proviso of exclusion, no change was made in its original form. Now, to what does this word "northward" apply. Is it applied to the direction of a boundary line, or is it applied to the general direction of the country from a boundary laid down upon the one side to another British possession upon the opposite side? To me it seems plain that it does not apply to a boundary line. The first proposal was to describe the country, by describing its extension towards the four points of the compass, to ascertainable boundaries, southward to the Ohio, westward to the banks of the Mississippi, and northward to the Hudson's Bay Territories. Now the only change made in the description, is this—instead of an extension in three directions you have an extension in one. You have a line drawn from the Bay of Chaleurs, which is to mark the eastern limit, to the Mississippi, the western limit, and between these two limits from the boundary so described upon the south, to the territories of the Hudson's Bay Company, the territories, island and countries are to be annexed to the Province of Quebec, This gives an ascertainable northern boundary to the whole Province. Any other construc-

tion would leave the whole of the annexed territory without any boundary upon the north, and would leave the Province of Quebec with a boundary fixed by the proclamation of 1763. Let me make this further observation. If the word "northward" applies to a limitary line, it must apply to a line upon the south. No other line is spoken of in the section. The words are, "bounded on the south by a line." Now, the word "northward" applies either to the countries, territories an islands, in which case the Mississippi must be the boundary upon the west, or it applies to the diraction of this southern boundary line, the only one mentioned. If it applies to a line, then this is the construction, that the territories, islands and countries to be annexed are bounded on the south by a line which at first extends westward as far as the Mississippi, and from that point to the Hudson's Bay Territories it extends northward. Hon. gentlemen cannot import into this section words which are not there, for the purpose of giving to it a meaning, which, without them, it will not bear. The direction of a western boundary cannot be given in the Act, for no western boundary is named. We point out the direction of what is set forth, and not of something not mentioned. We know that the word "westward" describes the direction of the southern boundary; and the word "northward," if applied to a line at all, must describe the direction of this same line continued, because the Act speaks of no other. It is too plain to require argument that a southern boundary, deflected northward, cannot be a due north line; so that, whether this expression refers to the direction of the country, or to the direction of a boundary line, it cannot mean a line running directly north. To my mind the language of the section is perfectly plain. The plan of description in the section is easily understood; and if a long and parenthetic clause had not been introduced, to describe the southern boundary, the meaning could never have been mistaken. I have already pointed out that if the word "northward" is applied to the direction of a line, instead of to the direction of the whole country from a given base, the Province of Quebec, under the Act, from Lake Nipissing westward, would be left without any boundary upon the north. Now, you have, in a matter of doubt, this rule of construction, when one interpretation would leave an instrument imperfect or defective, and another would make it perfect, the latter is to be preferred; so that, if there is doubt, the construction which will give you a boundary upon the north is to be preferred to that which leaves the country on the north wholly undefined I might let this question rest upon this rule of construction; but I will say further, that another rule of construction is, you must interpret a law so as to give effect to the

intention of Parliament. What was the intention of Parliament in this case? It is stated in the Act itself; it says the object is to embrace, in the Province of Quebec, "all the French colonies and settlements in British North America who had been heretofore left without any civil government." The number without civil government were 4,613. If a meridional line were made the boundary, 2,600 of this population would have still been left without civil government. By following the Mississippi all the French colonies and settlements are included in the Province of Quebec. The purpose of the Act is accomplished. By drawing a due north line more than half of them are excluded; the purpose of the Act is defeated. This, too, taken by itself would be sufficient to determine the proper construction. Then it is also a recognized rule that when a natural boundary is reached, it is to be followed unless there is an explicit direction to the contrary; in other words, natural boundaries are preferred to artificial ones. The Mississippi is a natural boundary, it was also an international boundary, and it is to be preferred to an astronomical line. The word "northward" embraces the whole sector of a circle, that is, any direction between north-west and north-east; if there is no reason for preferring one point of the compass to another within this sector, then the middle must be taken; but if there is, no matter how slight, the direction will be varied within these limits accordingly. Now, we have seen that the centre of this sector, here, is a due north line, and we have, as reasons for departing from this line, first, a natural boundary is reached. We begin at the Mississippi River. Second, it is required in order that the purposes of the law shall not be defeated. And third, this Act differs from an ordinary Statute in this —that it is an Act of State, and reasons of State must be given due weight in its construction. Now let us remember this fact, that the Mississippi River was the boundary between the possessions of England and of Spain. Can it be supposed for one moment, that Parliament would have provided a Government extending the territories westward for a thousand miles, to the very borders of the Spanish possessions, to the international boundary at one point— within sight of several important colonies and settlements —and yet so draw the boundary line, as to leave these colonies and settlements without a Government; leave a strip of country several hundred miles in length and, in many places, not fifty miles in width, wholly without any established civil authority. Such a supposition is possible in conception, but it is not reconcilable with reason, and, therefore, not reconcilable with law, especially the institutional law of the Empire. I hav e

Quebec Act is not an ordinary Statute, regulating the acts of private individuals. It is a great Act of State, established by the supreme authority, marking out limits within which a Government is to be established and over which it is to exercise authority. The great officers of State have construed the law. The King, under the advice of his law officers and Ministers, declared the boundary upon the west followed the Mississippi River to its source. When a large section of this Province was ceded to the United States, and it became necessary to issue a new Commission to the Governor of what remained still British territory, the new boundary upon the south was again declared to extend westward to the Mississippi River. I refer to these Commissions to show you how the King and his advisers interpreted the law. I shall say no more upon the subject of the western boundary. I have said enough to show you that from the confluence of the Ohio northward to its source the Mississippi was the boundary of Quebec upon the west. Before proceeding to indicate the northern limit it will be necessary to learn something of the dominion of the Hudson's Bay Company. If the word "northward" in the Quebec Act is made to refer to a limitary line, then that line is carried to the Hudson's Bay Company's possessions, and it there stops. No boundary upon the north is laid down between this point, wherever it may be, and the southern shore of Lake Nipissing. Quebec would still be bounded upon the north by a line drawn from the source of the St. John River to the southern shore of this lake, and there would remain, south of the possessions of the Hudson's Bay Company, and north of Quebec, a very large extent of country which was never transferred to Canada until effect was given to the proposal which I had the honor to submit to Parliament in 1878. I might, for the purpose of showing that this construction was never put upon the Act, refer to the separating line by which Quebec was divided. The extension of this line shows that there was a boundary upon the north. The Hudson's Bay Company received from the King a charter which professes to do two things, to give and grant to the Company the sole trade and commerce of all those seas, straits, bays, rivers, creeks and sounds in whatsoever latitude they shall be that lie within the entrance of the straits commonly called Hudson's Straits, together with all the lands and territories upon the countries, coasts and confines of the seas, bays, lakes, rivers, creeks and sounds aforesaid, that are not already actually possessed by or granted to any of our subjects or possessed by the subjects of any other Christian Prince or State.

"And that the said lands be from thenceforth reckoned and reputed as one of our plantations or colonies in America, called Rupert's Land;

and, further, we do by these presents, for us, our heirs and successors make, create and constitute the said Governor and Company for the time being, and their successors, the true and absolute lords and proprietors of the same territory, limits and places aforesaid, and of all other their premises hereby granted as aforesaid, with their and every of their rights, members, jurisdictions, prerogatives, royalties, appurtenances, whatsoever, to them the said Governor and Company and their successors, as of our manor of East Greenwich, in our County of Kent, in free and common soccage, beside the land so granted and beside the privilege of trading, and from the limits and places aforesaid. The charter goes on to say that they are to enjoy the whole and entire trade and traffic to and from all havens, bays, creeks, rivers and seas into which they find entrance or passage by water or land, out of the territories, limits and places aforesaid, and to and with all the natives and people inhabiting within the territories, limits and places aforesaid, and to and with all other nations inhabiting any of the coasts adjacent to the said territories, limits and places which are not granted to any of our subjects."

Now, there are two things spoken of: there are "the lands and seas conveyed in fee simple, with the right of excluse trade," and there is "the whole and entire trade of other seas and waters, and with nations inhabiting the coast adjacent to the said Territories." We have these two enquiries: which lands within the Straits of Hudson were conveyd in fee simple by this charter, assuming it to be valid, and which lands lie upon coasts adjacent to the said Territories, and of which no conveyance was made, but over which a right of exclusive trade was granted? It is worthy of observation that the Hudson's Bay Company have for a long time so interpreted their charter as to leave no country upon which the second provision could operate. Their claims of territory granted has grown larger by degrees, until not only the whole coasts of Hudson's Bay, but also the whole basin drained into the bay has been absorbed. The grant in their charter to the property in the soil, has swallowed up all other provisions, as the rod of Moses swallowed up the rods of the Egyptians. We have several questions to consider in order to arrive at a correct conclusion as to the boundaries of the Hudson's Bay Company's possessions. Could the King grant the territories not in his possession? If this question is answered in the affirmative, could he make a grant that would stand in the way of any other monarch acquiring possession and sovereignty over any portion of the country so granted? The grant itself professedly excludes: 1st, any portion of the country possessed by any British subject; 2nd, any territory granted to any British subject; and 3rd, any territory possessed by any other Christian Prince or State. It has been argued that the King could not make a valid grant, because the country was not in his possession at the time the grant was made. When the French Government pointed out to the English that the French King had many years before granted a

charter to his subjects of the same country, the Hudson's Bay Company replied that he could not make a valid grant. The maxim *nemo dat quod non habet* applied. I do not care to discuss just now the question of the validity of the grant. There can be no doubt of this, that no title passes by such a grant until the sovereignity of the country is acquired. We must look at the object and policy of such grants in order to understand their effect. They were invariably accompanied by a grant of political authority; and the private right of property was always held subordinate to the public trust which accompanied it. The policy of making these grants began with Henry VII and were continued until the time of George II. In many cases they were powers rather than grants of property already in the possession of the Crown. Where the Crown had not already the sovereignty of the country these grants, in form, profess to convey very extensive tracts of country; but they were held not to convey more than the parties to whom the grant was made succeded in reducing to possession. The law and the usage have been so well established with regard to these formal grants, that I need but refer to a few instances to sustain this principle. In the time of Henry VII, in 1495, the King granted a charter to John Cabot empowering him or his deputies to sail into the eastern, western or northern sea to search for islands and countries before unseen by Christian people; to affix the banner of England on any place that he or they might discover, and to possess and occupy the country so discovered as the vassals of the English Crown. The patent was one by which Cabot was to acquire a paramount title for his master and a lordship for himself. At the time America was discovered feudal usages still strongly marked the political and social structure of western Europe. England had recently held extensive possessions in France connected with her according to feudal principles. Ireland and Wales were subordinate Governments, and within England herself there were several Palatine counties which suggested the method by which the dominions of the King were to be extended. Cabot sailed along the coast of North America from 56° to 38° north latitude. He made no settlement, and his patent was not held to have conveyed to him anything. Elizabeth, in 1578, granted a charter to Sir Humphrey Gilbert. By it he was authorized to discover and take possession of all remote and barbarous lands in North America not occupied by any Christian Prince or people. But this was not held to rest in him the whole of the unsettled portion of North America, but so much only, as he secured to his Sovereign by settlement and dominion. Under this charter he took formal possession of Newfound-

land in the name of the Queen. He and his associates endeavored to carry out the objects of the charter. He failed; and he was not regarded as having any right of property in the Island, in consequence of this grant. The grant which was made to the Plymouth Company and to the London Company, extending from the Atlantic to the South Sea, were not supposed to convey to them more territory than they reduced to possession. New York, which was patented to the Duke of York, lay within the limits of the country formerly covered by the charter of other parties. The principle which I have stated shows that the title of those parties was not so much the patent from the Crown as their arms and their merchandize; and we must look, not to the charter, but to what they accomplished under it, to ascertain what their title was, for it is not simply the extent of territory which they claimed, but the extent of dominion which they secured for the Crown by their energy and enterprise, that we have to consider. The Hudson's Bay Company had upon the shores of Hudson's Bay at the time their charter was granted but one post, Fort Rupert, on Rupert River. The King's patent, I suppose, may have conveyed to them this post with a reasonable area of territory within its vicinity. What more they acquired down to the time that their possessions were seized by France must be determiued by a careful consideration of what they did and of what was done by France. I deny altogether that the King could convey to them by this charter a title to territory which was not only at the time not in possession of the Crown, but of which the company before the Treaty of Ryswick had not reduced to possession. From 1697 to 1713 the country along the coasts was in the possession of France. It was not possible, after this period, for the Company to acquire any fresh dominion on their own behalf. All the country which they had ever held looking towards Hudson's Bay was to be restored and no more. What they had held then at any time before 1697, was ever after the extent of their possessions. Their grant was a grant within the Straits of Hudson. They claimed it as extending from Grimmington Island to Lake Mistassin. Before the Treaty of Utrecht, they made no claim to the ownership of the country south of the Bay. They were content with a claim to the exclusive trade.

Mr. BANNERMAN. I would like to ask the hon. gentleman if this Treaty of Utrecht that he is talking about was not later than that?

Mr. MILLS. What I stated a moment ago was a proposition of the Hudson Bay Company. It was accordance with the

line drawn upon the map. The instructions of the English Commissioners were also in accordance with a similar line. The opinion given by Sir Arthur Pigott, Mr. Spankie, and Mr. Brougham, is a most carefully considered opinion. They say that the grant was not intended to comprehend all the lands and territories that could be approached through Hudson's Straits; that it is limited by its relation and proximity to the Straits; that it is not a grant of all the lands and territories upon the countries, coasts and confines of the seas and rivers within the Strait, to an indefinite extended distance. Still less is it a grant of all the lands lying between the seas, straits, rivers, &c., hundreds of miles away from the Straits. There is a point stated in the opinion of Mr. Holroyd which is of vital consequence in the consideration of this question, and which has been wholly neglected by those who are working to uphold the authority of the Hudson's Bay Company. They assume that the whole country must belong to the Hudson's Bay Company, unless it was previously held by the French King. Now, that is not the fact. If the doctrine, which I have already stated as the policy of those charters, is well founded, then the charter given to the Hudson's Bay Company could no more stand in the way of the French subsequently acquiring dominion, than the former charter, given by the King of France, could prevent the English reducing any part of the coast to a British possession. Mr. Holroyd says the charter will include all the country within the grant not at the time actually possessed by the subjects of any foreign Prince, and which have not been subsequently possessed by any foreign State previous to actual or virtual possession being taken under the charter. The charter could not convey the North-West Territories until the Company had actual or virtual possession of them on behalf of themselves or the Crown, and so as, by the law of nations, to vest the Sovereignty in the Crown. It could not stand in the way of France extending her dominion over this country. The charter to the London Company extended from the Atlantic to the Pacific, but whoever heard of that that charter prevented Spain from extending her sovereignty over Northern Mexico, or France from acquiring possession of Louisiana? Who will undertake to show the boundaries of Virginia by looking to the charter by which the Old Dominion was first constituted? It is absurd to do so. North America was open to all Europe to acquire. Each nation might undertake to establish its Sovereignty over any portion of it, in conformity with the law and usages of nations. Any monarch might say to a number of his subjects: "I will give you an exclusive charter to the whole continent, between certain parallels, subject to rights already acquired by other of my

subjects, subject to rights already acquired by another Prince and another people." But while he excepted, as he was bound to do, vested interests, his charter had no force against subsequent settlement within these limits by any foreign Government. Another Prince might give a charter of exactly the same character to his own people either before or after; and if, under that charter, his subjects did not enter upon territory in actual or virtual possession of another State, they were acting within their rights. France was as free to take possession of the North-West against the charter of the Hudson's Bay Company as she was to take possession of Louisiana within the chartered limits of Virginia. By the Law of Nations a title by discovery is an imperfect title; a title recognized by courtesy, by forbearance, and it must, within reasonable time, be supported by possession in order to make it valid and to establish the sovereignty of the discoverer. This is the doctrine of England. It was asserted in the time of Elizabeth. It was asserted by England in reference to her disputes with France relating to their possessions in North America. Mendoza, the Spanish Ambassador, when he remonstrated against the expedition of Drake, was told by Elizabeth :—

"That she did not understand why her subjects or those of any other European Prince should be deprived of the traffic in the Indies; that as she did not acknowledge the Spaniards to have any right by the donation of the Bishop of Rome, so she knew no right that they had to any places other than those they were in actual possession of For that their having touched here and there upon a coast and given names to a few rivers and capes, were such insignificant things as could in no wise entitle them to a proprietary further than in parts where they actually settled and continued to inhabit."

The Lords of Trade deny that the mere grant of a charter, without possession, can be admitted as having any force. In a communication to the King in 1721, they say that—

"A charter without posseesion can never be allowed to change the property in the soil."

And they point out that the French are now seeking to extend their territory by the erection of forts instead of relying upon their charters. In the year 1719, Commissioners were appointed to settle the boundary agreed upon under the Treaty of Utrecht, and they were specially instructed—

"In wording such articles as shall be agreed on with a Commissary of His Most Christian Majesty upon this head, that the said boundaries be understood to regard the trade of the Hudson's Bay Company only; that His Majesty does not thereby recede from the right to any lands in America not comprised within the said boundaries; and that no pretension be thereby given to the French to claim any tracts of land in America, southward or south west of the said boundaries."

This statement is as explicit as it can well be, that the boundary line which the Government proposed to draw

under the Treaty of Utrecht, was not to be a line separating the dominions of England from those of France, but a line relating to the trade of each with the Indians. The English Government took, in fact, this position that the country between the settlements of Canada and those of Hudson's Bay was still an unoccupied wilderness, one which was still not so far possessed by either as to be under its dominion, and that this question of dominion was one to be settled by the energy and enterprise of Frenchmen and of Englishmen in the future. Now, with this rule before us, as to the means of acquiring and extending sovereignty, let me look at the facts dealt with by the Treaty of Utrecht. By the tenth article of that Treaty the King of France agreed to restore to the King of England, to be possessed in full right forever, the Bay and Straits of Hudson, together with all lands, sea coasts, rivers and places situate in the said Bay and Straits, and which belong thereunto. No tracts of land or of sea being excepted which are at present possessed by the subjects of France. It is agreed on both sides to determine within a year, by Commissaries to be forthwtih named by each party, the limits which are to be fixed between the said Bay of Hudson and the places appertaining to the French; which limits both the British and French subjects shall be wholly forbidden to pass over, or thereby to go to each other by sea or by land. These are the provisions of the Treaty of Utrecht which relates to the surrender of the country in the vicinity of Hudson's Bay to the English. Was this to be a division relating simply to trade, or was it a division relating to the sovereignty of the country? I shall assume that the parties to the Treaty intended that the sovereignty of the country should be divided and that the surrender to the English was a surrender of the sovereignty of the shore of Hudson's Bay, and I shall undertake to show that the places retained by France, called in the treaty places appertaining to the French, were north of the watershed, and the boundary was to be a line drawn between them and the English places on the shore of the Bay. The French plenipotentiaries at first objected to this clause of the treaty, because it might receive a more comprehensive meaning than the parties intended. Mr. Prior, in writing to his Government, said:

"As to the limits of Hudson's Bay Company, and what the Ministry here seem to apprehend, at least in virtue of the general expression, *tout ce que l' Angleterre a jamais possedé de ce coté là* (which they assert to be wholly new and which I think is really so since our plenipotentiaries make no mention of it) may give us occasion to encroach at any time upon their dominions in Canada, I have answered, that since according to the *carte* which came from our plenipotentiaries marked with the extent of what was thought our dominion, and returned by the French with what they judged the extent of theirs, there was no very great difference, and that the parties who determine that difference

must be guided by the same *carte*. I thought the article would admit of no disputes."

Now this letter assists us in rightly interpreting the tenth article of the Treaty of Utrecht. It shows that the French were afraid that the English might claim under the expression, "all that England ever possessed on that coast," a part of their dominions of Canada. They were not afraid that the English would cross the watershed; but they were afraid that the country between Abbitibbi and the Bay; between their ports upon the Albany and the Bay, and other sections of the country which the French held as part of Canada and the shores of the Bay, would be claimed by the English. The plenipotentiaries had before them a map by which those who determined the difference, were bound to be guided. They were not to draw a line nearer to the Bay than that drawn by the French, nor further away than that drawn by the English. Mr. Prior tells us that there is no great difference between those lines. The line drawn by the French is described as follows:—

"The line of separation should commence at Cape Bouton, pass through the middle of the territory which is between Port Rupert and Lake Nemiskaw, of which Père Albanel Jesuit and Mr. De St. Simon took possession in the name of the King in 1672, follow at the same distance from the Bay along the eastern side in such manner as to divide in the middle the territory between the Lake of the Abbitibbis and Fort Monsipi or St. Louis, continuing at a similar distance from the shores of the Bay at the western side until beyond the river of St. Therese and Bourbon."

Cape Bouton is about the 61° of north latitude. The line drawn by the English was from Grimmington Island in 58½° north latitude, south-westward to Lake Mistassan; beyond this no line is described. When the negotiations were opened in 1719 the English Commissioners disregarded their instructions, and demanded that the line should commence upon the coast 2° farther south, and should be continued to the 49th parallel. The negotiations came to nothing, nor was it expected they would. The lines upon the map by which the Treaty of Utrecht was to be interpreted, were wholly disregarded in the English demands. Mr. Pultney, in writing to Secretary Craggs, admitted that he never expected any success, that the French view were opposed to the English; that their interests were directly opposite; and that the French knew that they (the English) were prepared to reject all their demands. If we look at the settlements, or trading ports, it becomes pretty clear that the line which it was proposed to draw, was a line similar to that drawn by the Treaty of St. Petersburgh upon the western coast, a line which would leave to the English a moderate extent of country in the vicinity of the bay for the protection of their post, but which would

not encroach upon the French posts in the interior. The line was one which neither was permitted to cross for the purpose of trade, but which was not intended to interfere with the freedom of trade by the Indians, remaining in the possession of either party. The charter of the Hudson's Bay Company was put an end to by the Treaty of Ryswick. The restoration of their possessions would not restore to them the franchises or the rights of property which that charter gave them. The mere possession acquired by the success of arms during a war does not amount to absolute sovereignty, but when it is followed by treaty there is a complete change of sovereignty and the political rights, the special privileges and the right of property, which reposes upon dominion, all go together. The Hudson's Bay Company claimed of late years, the whole Basin of Hudson's Bay; but they have not ventured to contest the possession of the valley of the Red River in Minnesota and Dakota. The Treaty of Ryswick terminated their chartered rights. The restoration of the Bay, and the land upon its border, to the Crown, could not revive the charter of the Company. The case of the Duke of York is a case in point. A patent had been given to James, of New York. He governed the country under it for nine years. The Dutch obtained possession of it, and established there a Civil Government. At the Treaty of Westminister it was restored to the King of England. The Duke again claimed the country, but it was held that his proprietorship had been extinguished by the Dutch conquest and Government; and that the title, after restoration, was in the King alone; and a second patent was necessary to give him any title to the country. Great political corporations are, by the Law of Nations, put upon a wholly different footing from private non-political holders. Their right of property and their powers of Government are inseparable, and they pass away together. Whatever dominion the Hudson's Bay Company subsequently acquired was a dominion for the Crown. I will rest content with simply stating this proposition, which, if time permitted, could, I think, be easily established. In 1809, when the country on the east of the River St. John, as far as the Labrador shore, was, by an Act of the Imperial Parliament, again severed from Lower Canada, and re-annexed to Newfoundland, it embraced the whole country northward to the Hudson's Straits. It included the whole coast to the 61° of north latitude. So far as I know, the Hudson's Bay Company never made any protest against this Act, and yet it included a large section of country which they have always claimed was granted them by their charter. After the Treaty of Utrecht the Hudson's Bay Company had

no other claim than that which actual occupation of certain posts gave them. They had again and again offered to accept the Albany River as a boundary. They say that rivers are more certain and obvious than lines of latitude, and can be better laid down in a wild country. They had at no time before the Treaty of Utrecht, proposed to extend their boundary further southward than Lake Mistassin, which is in the latitude of James Bay. They proposed that the French should not come beyond the 53° of north latitude or the Albany River on the west. When the British Government hoped to again so obtain a controlling influence on the North American Continent, they proposed to establish a great Province in which the people would be governed according to the principles of the British Constitution. The customs of Paris were to be confined to the country east of the Ottawa River. A boundary line was extended northward to Hudson's Bay, and all that portion of Canada to the westward and southward of this line to its utmost extent was to be included in the new Province. The deadly wound which had been received by the loss of the American colonies was, by this new establishment, to be healed. It was the first step in beginning colonization anew, by which a great British power was again to be founded. The description does not say that all Canada is to be embraced, but all to the westward and southward of the boundary named, and you have but to look at the map to see that the Albany River is a natural boundary upon the north. The expression is not due west or due south, but westward and southward. Due west and due south are directions which would exclude the whole peninsula west of Cobourg to the Detroit River, and on the north the boundary would cross the Albany River at about its middle distance. But the rule which I have already mentioned makes the Albany River, as a natural boundary, preferable to an astronomical line, and justified the arbitrators in declaring it to be the boundary. I shall not detain the House longer. I have said enough to show that the course taken by the arbitrators was a reasonable one. To show that if they erred at all it was in limiting Ontario on the west to the meridian of the North-west Angle; to show that in making the award they set forth what they believed to be the true legal boundaries. The Province of Ontario will stand by that award. She is entitled to do so. What it gave her the law itself gives her, for that award is final and concludes the parties to it. It cannot be repudiated without dishonor. No man will consent to have his property ruthlessly and illegally taken from him. No more will two millions of people. There is not a man from one end of the Province to the other who does not

know that the Prime Minister has been driven on in this policy of spoilation by his Quebec colleagues. They refused to recognize that we are one Dominion, and that the growth and prosperity of any Province is an advantage to every other part of the Dominion. They envy us our rights, and they would filch from us a portion of our heritage. I can tell the First Minister that whether the people of Ontario be for his policy of high taxation or whether they be against it, whether they approve or disapprove of his land policy in the North-West, they will disregard all these to protect their Province against robdery to gratify the envious. There will be no two parties upon this question, and the very same feelings and impulses, which make us all one people to resist foreign invasion, will make us one people to resist to the death this attempt at dismemberment; and the man from Ontario who upholds the policy of the Government, no matter what his views may be on the question of the Tariff, will be regarded as an enemy of his Province, and when the day of election comes will receive at the hands of the people an enemy's reward.

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